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2 **IN THE UNITED STATES DISTRICT COURT FOR THE**
3 **WESTERN DISTRICT OF MISSOURI**
4 **WESTERN DIVISION**

5 **UNITED STATES OF AMERICA,**) **Case No. 17-mj-00081-JTM-01**
6 **Plaintiff,**) **Kansas City, Missouri**
7 **v.**) **May 9, 2017**
8 **ISSE AWEIS MOHAMUD,**)
9 **Defendant.**)
_____)

10
11 **TRANSCRIPT OF HEARING ON MOTION FOR**
12 **PRETRIAL DETENTION**
13 **BEFORE THE HONORABLE SARAH W. HAYS**
14 **CHIEF UNITED STATES MAGISTRATE JUDGE**

15 **APPEARANCES:**

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(Court in Session at 1:11 p.m.)

THE COURT: All right. We're here on the case of *United States vs. Isse Mohamud*, Case No. 17-mj-81. If counsel would state their appearance.

MR. CASEY: Brian Casey appearing on behalf of the United States, Your Honor.

MS. ALLEN: Carie Allen for Isse Mohamud who appears in person.

THE COURT: All right. We're here today for a continuation of the hearing that we started last Friday. Does the Government have additional evidence?

MR. CASEY: A short amount, Your Honor.

THE COURT: All right.

MR. CASEY: We'd like to --

THE COURT: If you want to --

MR. CASEY: We'd like to recall Special Agent Mike Buono.

THE COURT: All right. Come forward.

MICHAEL P. BUONO, GOVERNMENT'S WITNESS, SWORN

DIRECT EXAMINATION

BY MR. CASEY:

Q. Good afternoon, Special Agent. I know you testified on Friday, but could you go ahead and please just restate your name, spelling your last?

A. Yes. Michael Buono. B-U-O-N-O.

1 Q. And you testified on Friday about an investigation involving
2 the defendant in this case, correct?

3 A. Yes.

4 Q. Has the FBI taken additional investigative steps since
5 Friday?

6 A. Yes.

7 Q. Are some of those investigative steps things that the FBI
8 would not want to be public at this time?

9 A. That's correct.

10 Q. So, is your testimony today just some additional information
11 to assist the Court with regard to the particular issues being
12 raised with this detention hearing?

13 A. Yes.

14 Q. Okay. And in that regard I'd like to -- drawing back to your
15 testimony on Friday about a Facebook account. Do you recall that
16 testimony?

17 A. Yes.

18 Q. What additional information would you like to provide to the
19 Court with regard to that account?

20 A. Sure. After speaking with the interviewing agents, I was
21 informed that the defendant admitted to being Jason Mason on
22 Facebook and admitted to having his communications about wanting
23 to join the Mujahideen in Syria.

24 Q. What interview was that, just to be clear?

25 A. It was a Face -- it was an interview by FBI agents from the

1 Kansas City Field Office in New York City.

2 Q. And have you had a chance to look at some of that Facebook
3 correspondence?

4 A. Yes.

5 Q. Could you please provide some of that to the Court?

6 A. Sure. I have this to reference, and I'll just get to the
7 specifics with the specific communication. According to Jason
8 Mason stated, "I don't know that many brothers where I live in
9 America and it is a place full of disbelievers, so I don't get to
10 see that many brothers. But I'm moving to Syria to join the
11 Syrian Mujahideen and fight against those who want Islam gone and
12 those who kick the Muslims from their homes, from those who
13 destroy the Muslim lands." Jason Mason also stated, "I will do
14 that after I save enough money to go to Saudi Arabia and perform
15 the Umrah and then finish the Koran and learn Arabic, and then go
16 to Syria and join the Mujahideen. Insha'Allah." He also stated,
17 "Insha'Allah. I will support them all. And by the way, are
18 there Mujahideen who are not righteous there? The Mujahideen who
19 are like the fighters who fought by the prophet." The other
20 individual on Facebook stated, "There's a hadith that says,
21 'However supports Mujahideen by weapon or money, he will be like
22 him, rewarded.'" Jason Mason replied, "Interesting. I will
23 support them in the best way I can. Insha'Allah. And I will
24 join them and fight by them." Jason Mason also said, "I'm
25 thinking about becoming a sniper. Insha'Allah."

1 Q. When was that correspondence dated?

2 A. It was on April 24th, 2014.

3 Q. Did you have prior testimony about what was found in that
4 account after that date?

5 A. Yes. And that was the communications were deleted.

6 Q. Recalling back to what you just read to the Court, was there
7 sort of a preparation list that you read?

8 A. Yes.

9 Q. What did your investigation disclose about -- since 2014 when
10 that was written, what the defendant had done on that list?

11 A. In regards to, "I will do that after I save enough money,"
12 through the course of the investigation we found that he has
13 saved \$10,000 through working. As far as going to Saudi Arabia,
14 he admitted to an FBI agent that he knew someone in Saudi Arabia.
15 And then he also informed someone in the community that he
16 intended to travel to Saudi Arabia. In regards to "Finish the
17 Koran," there are at least three individuals that we identified
18 as the defendant attempting to convert them to Islam. And one of
19 those individuals stated that he is the most radical Muslim he
20 has ever met.

21 Q. Was there anything about learning Arabic that your
22 investigation disclosed?

23 A. I'm sorry. Yes. And in regards to the Arabic, there were
24 books and literature at the house that was consistent with him
25 learning Arabic.

1 Q. Could you describe that a little more, please?

2 A. The books, it was like educational books and how to write
3 Arabic and things like that.

4 Q. During his interview with the FBI agents in New York, what
5 else did he say that would be relevant to your prior testimony
6 about indicia of mobilization, radicalization?

7 A. Sure. He referred to Anwar al-Awlaki as Sheik Anwar during
8 the interview. That's a concern for the FBI because Anwar al-
9 Awlaki is the external operational or was the former external
10 operational commander for Al-Qaeda in the Arabian Peninsula. He
11 also admitted to subscribing to the YouTube channel that Anwar
12 al-Awlaki -- a YouTube channel that's for Anwar al-Awlaki.

13 Q. Was there any other information you learned during interviews
14 relevant to this proceeding?

15 A. Yes.

16 Q. Was one information have -- was some of that information from
17 a travel agent?

18 A. Yes.

19 Q. What did you learn?

20 A. On two separate occasions through an interview, a travel
21 agent said -- recommended that we take his passport from him.

22 Q. What was the context?

23 A. It was in regards to travel over to the Middle East and that
24 it didn't sound quite right as far as the reason why he was going
25 and that he recommended that passport be taken.

1 Q. Okay. What did you learn from a computer repairman?

2 A. We learned that the defendant took a computer -- a laptop to
3 get repaired for a cracked screen. And the repairman found it
4 very odd that the defendant would not leave sight of that
5 computer while it was being repaired. The computer -- you know,
6 typically you take a computer and drop it off and come back when
7 it's fixed. But he wanted to be in sight and the computer remain
8 -- the computer repairman found it very odd.

9 Q. And lastly, did you -- since Friday have you had continuing
10 interviews with the defendant's family?

11 A. Yes.

12 Q. Is there anything you learned from those interviews you'd
13 like to share with the Court?

14 A. Yes. One of the family members stated, "If I were you, I
15 would keep an eye on him."

16 Q. And what was that a reference to?

17 A. That was in reference to if the defendant was released.

18 Q. And would this have been one of the family members the
19 defendant would have likely lived with upon his release?

20 A. Yes. It as a close family member.

21 MR. CASEY: Nothing further, Your Honor.

22 THE COURT: All right. Ms. Allen.

23 CROSS-EXAMINATION

24 BY MS. ALLEN:

25 Q. Agent, I want to clarify a little bit about these Facebook

1 statements. Were these statements -- I believe we had this
2 testimony last time that these were from 2014, is that correct?

3 A. That's correct.

4 Q. Okay. So, these are not recent statements involving the
5 Mujahideen?

6 A. Yes.

7 Q. Okay. Now, as part of this investigation have you searched
8 the family's home?

9 A. No.

10 Q. Have agents gone through the family's home, looked through
11 anything?

12 A. Yes.

13 Q. Okay. Were any firearms found in the home?

14 A. No.

15 Q. Were any sort of dangerous items, you know, short of regular
16 household items found in the home?

17 A. No.

18 Q. Okay. Was there -- have there been any evidence found of Mr.
19 Mohamud planning something dangerous or something along those
20 lines? I'm not talking about travel. I'm talking about planning
21 something else.

22 A. Again, anything we would suspect that was used to plan has
23 been destroyed or wiped.

24 Q. So, there hasn't been anything found?

25 A. That's correct. To this date that's correct.

1 Q. Are you aware that Mr. Mohamud doesn't have a driver's
2 license?

3 A. I was not aware of that.

4 Q. You're aware that he doesn't have a car?

5 A. Yes.

6 Q. But he actually traveled to and from work because his mother
7 took him to and from work. Were you aware of that from
8 interviews?

9 A. And his father also.

10 Q. So, he relied on his family for transportation?

11 A. Yes, from what I know.

12 Q. And I think we've covered this fairly thoroughly in the first
13 hearing, so I don't want to belabor it. But as far as this case
14 sort of originated, his family called in and reported a missing
15 person, correct?

16 A. Yes, to the Kansas City Police Department.

17 Q. And then they -- before they were contacted by the FBI, the
18 family further called in and said they had concerns about him
19 being involved with bad people or something along those lines.
20 And that's when the FBI got involved?

21 A. No. The Kansas City Police Department notified the FBI.

22 Q. Okay. But you're aware that that information came from his
23 family?

24 A. As far as -- can you please repeat that?

25 Q. As far as being concerned about the nature of his travel?

1 A. Yes. A couple family members were concerned that the travel
2 was related to terrorist activities.

3 Q. And there are, I think, seven family members who live in that
4 home, is that correct?

5 A. Yes.

6 Q. And from my understanding from you they've been cooperative
7 and they've provided you with information and they have
8 participated in interviews, correct?

9 A. That is incorrect.

10 Q. Have they not been cooperative with you?

11 A. That's correct.

12 Q. Okay. Who has not been cooperative with you?

13 MR. CASEY: Your Honor, I'm going to object on
14 relevance. We've kind of tried to keep some of the details of
15 various family members kind of out this in part on a ground that
16 there might be some -- the agent may say some things that would
17 tend to incriminate some family members. We've tried to keep
18 that out of this hearing. So --

19 THE COURT: Well, here's the problem. I mean, you've
20 brought up the family members and what some of them said. And I
21 think that, unfortunately, you know, opens the door. If you
22 think something needs to be testified to not in public record, we
23 have to talk about whether we were willing to do that. But, you
24 know, you talked about family members saying if he were released,
25 you know, we'd be concerned and we'd want you to keep an eye on

1 him and some other testimony. So, I mean, I think she's entitled
2 to inquire.

3 MR. CASEY: I understand, Your Honor.

4 THE COURT: You may proceed.

5 BY MS. ALLEN:

6 Q. Have you interviewed his mother?

7 A. Yes.

8 Q. Okay. And has she been cooperative with you?

9 A. No.

10 Q. And why is it you believe she hasn't been cooperative with
11 you?

12 A. Well, it's difficult to know for sure at this point because
13 of some statements that she's made of the story have been
14 gradually changing as more evidence has come to light. But there
15 was a letter that the defendant admitted to leaving. And it is
16 my belief at this point that the mother was aware of that letter
17 and she was at least one of two individuals who initially saw
18 that letter.

19 Q. And you've been told about that letter. You testified about
20 that at the last hearing, correct?

21 A. Yes. But I did not speak into detail about that letter.

22 Q. But the family did tell you about the letter?

23 A. When confronted and when we began to interview and
24 interrogate.

25 Q. All right. I have no further questions for you.

1 THE COURT: Anything further?

2 MR. CASEY: No, Your Honor. Not from the United States.

3 THE COURT: I have some further questions that may or
4 may not have been asked on Friday. Any objection if the Court
5 kind of re-asks? I mean, I hope they're not duplicative, but I'm
6 just confused about some of the testimony from last week.

7 MR. CASEY: Not from the United States, Your Honor.

8 THE COURT: All right.

9 EXAMINATION BY THE COURT:

10 Q. I want to go back to -- what day did the defendant arrive in
11 Egypt?

12 A. It was either April 25th or April 26th. He departed here on
13 April 24th. And I'm pretty sure he arrived in Alexandria on
14 April 25th, according to the flight itinerary.

15 Q. All right. And on April 26th, he booked a flight back to the
16 United States?

17 A. Yes. That is -- there is a record of that travel being
18 booked on that day. And that was for a departure on April 27th.

19 Q. And at the time he booked that ticket on April 26th, had he
20 been interviewed by anyone in Cairo?

21 A. Not --

22 Q. Or anywhere in Egypt?

23 A. I don't know.

24 Q. Well, you talked about some interviews that had happened in
25 Egypt. Do you recall that?

1 A. Yes.

2 Q. And when did that occur?

3 A. I know the FBI interviewed him on May 1st.

4 Q. And do you know, did they ask him about when he planned to
5 return to the United States?

6 A. I don't recall the details regarding that in the interview.

7 Q. Well, I mean, when you say you don't recall the details, I
8 mean, is that something that they asked him about?

9 A. I don't recall. I'm sorry. I don't know.

10 Q. Well, when did he get on the flight to return to the United
11 States?

12 A. I believe it was May 3rd. And he arrived back in the United
13 States -- well, no. I think it was May 4th and he arrived back
14 in the United States on May 4th.

15 Q. Yeah. And what can you tell us about the circumstances
16 surrounding his getting on the flight back to the United States?

17 A. In what regards?

18 Q. Well, in any regards. I mean, this whole hearing is about
19 flight risk.

20 A. Okay.

21 Q. That's the basis on which the Government is asking that he be
22 detained. Not as a danger, but as a flight risk.

23 A. Right.

24 Q. And so I'm trying to ascertain what the circumstances were
25 that caused him to get on a flight to come back to the United

1 States.

2 A. Yeah. I'm unaware of how and who was involved with having
3 the defendant return to the United States. I am unaware of what
4 was discussed behind doors. But I am under the impression, like
5 I testified on Friday, that he left Egypt voluntary and he
6 purchased his own plane ticket.

7 Q. All right. And anything else you know about the reasons he
8 returned to the United States?

9 A. I can't think of specific details in regards -- I don't know
10 if the Egyptian government wanted him -- you know, wanted him out
11 of their country. I don't know. I don't know the details behind
12 it.

13 Q. Well, did someone other than the FBI interview him in Egypt?

14 A. It was -- it's under my impression with the interview that
15 FBI Cairo did with the defendant that he was interviewed by
16 Egyptian authorities.

17 Q. And do you know if they shared the contents of their
18 interview with the FBI?

19 A. I have not seen any intelligence or content based, you know,
20 from any interview conducted with the defendant.

21 Q. Well, you may not have seen any content, but do you know
22 whether the Egyptian authorities shared information they received
23 from interviewing the defendant with the FBI?

24 A. The FBI has not been in any receipt of information
25 surrounding that interview or the details of his detainment.

1 Q. He was detained in Egypt?

2 A. I believe so, at a hotel.

3 Q. By who?

4 A. By the Egyptian authorities.

5 THE COURT: All right. Any follow-up anyone wants to
6 do?

7 MR. CASEY: Not from the United States, Your Honor.

8 MS. ALLEN: No, Your Honor. I do have a proffer that
9 may help clarify the travel issues.

10 THE COURT: All right. Thank you. All right. Thank
11 you.

12 THE WITNESS: All right. Thank you.

13 THE COURT: All right. Thank you very much. All right.
14 Does the Government have any additional evidence?

15 MR. CASEY: No, Your Honor.

16 THE COURT: All right. Ms. Allen?

17 MS. ALLEN: Your Honor, we would proffer that if Mr.
18 Mohamud were to testify, he would testify that he arrived in
19 Egypt and booked a flight back home approximately within 24 hours
20 of arriving. That flight was booked prior to any contact with
21 authorities in any way. And he was little unsure on dates. But
22 at approximately the 26th or 27th, it was before his flight had
23 left, he was taken into custody by Egyptian authorities. And he
24 remained in their custody and then the FBI arrived and they
25 interviewed him in Egypt. So, he had planned to take the flight

1 out on the 27th, but was taken into custody by Egyptian
2 authorities prior to that flight leaving. And then he
3 voluntarily left on the next flight he was allowed to leave on.
4 Which I believe -- we have those dates from the previous hearing,
5 but it was, I think, May 3rd.

6 THE COURT: All right. So, the Egyptian authorities,
7 your proffer would be, turned him over to the FBI?

8 MS. ALLEN: Essentially. That appears to be what
9 happened.

10 THE COURT: Is it your contention he was in the custody
11 of the FBI?

12 MS. ALLEN: He was in the custody of the Egyptian
13 authorities. I'm not sure that he was in the custody of the FBI.
14 I know that he bought his own ticket and he did leave
15 voluntarily.

16 THE COURT: All right. And do you have any objections
17 to that proffer?

18 MR. CASEY: No, Your Honor. Only just to clarify that
19 he was not in the custody of the FBI until he arrived in Kansas
20 City, Missouri, the night of, I believe, May 4th when he was
21 arrested on the current complaint.

22 THE COURT: All right. Any other evidence from either
23 side?

24 MR. CASEY: No, Your Honor.

25 MS. ALLEN: No, Your Honor.

1 THE COURT: And any argument that either side wants to
2 make?

3 MR. CASEY: Yes, Your Honor, if I may? Your Honor, I
4 know this was a question to Mr. Raskin on Friday. Just to
5 clarify, the United States is moving under both prongs for
6 detention.

7 THE COURT: Well, what's the statutory authority for
8 moving under both prongs?

9 MR. CASEY: Well, Your Honor, I took a look at it and I
10 pulled some case law to confirm it, but I didn't have time to
11 make copies or get a brief to the Court. I apologize. But the
12 way the statute works is §3142(f) and (e) are supervisions that
13 work independently. And so §3142(f) creates the -- it lists
14 basically seven conditions that need to be made for someone to be
15 detained at all. And our provision in this case is
16 §3142(f)(2)(A), serious risk that such person will flee. And so
17 the Court needs to make a determination whether there is a
18 serious risk that the person will flee. But that determination
19 is analytically different. It's just an entirely distinct
20 determination from the determination under §3142(e), that is,
21 that there are no conditions of release that would ensure the
22 defendant's appearance or safety of the community. And so those
23 are -- they're basically -- one is the threshold question. One
24 gets us in the door for detention and that's the (f). And the
25 United States submits that there is more than sufficient evidence

1 that this individual is a serious risk of flight. And at that
2 point the Court needs to then make the two separate inquiries
3 under (e), that is, are there conditions that would ensure the
4 safety of the community and conditions that would ensure his
5 appearance in court. And in a case I found, the only -- I found
6 a little bit of circuit law out of the Tenth Circuit. And this
7 was an unpublished opinion that's available online at 570 Fed.
8 Appx. -- so, F-E-D. A-P-P-X. 819. It's a 2014 case from the
9 Tenth Circuit named *United States vs. Gerkin*. And in that case,
10 they do -- they don't decide it on that issue. They say that the
11 District Court needs to make a better record. But they do say
12 it's possible that -- and I'm reading -- I'm going to read, "The
13 existence of a serious flight risk is the predicate for a
14 detention hearing under §3142(f)(2)(A), but it does not alone
15 justify detention. Under §3142(e)(1), judges can order detention
16 only if they find that no condition or combinations of conditions
17 will reasonably assure community safety and appearance in court.
18 If the district judge meant the finding of a serious flight risk
19 to support the ultimate detention decision, that is also
20 problematic."

21 THE COURT: Of course, I want to look at that. And I
22 have the cite here because what you're reciting to me about they
23 must find community safety and appearance. And of course we know
24 it's an or.

25 MR. CASEY: We know it's or. That's right, Your Honor.

1 And in --

2 THE COURT: So, I mean that -- if you're reading as it's
3 written, that's the first problem, but.

4 MR. CASEY: Well, it then goes on to say, "First, the
5 magistrate judge ordered Mr. Gerkin detained based on a finding
6 of danger to the community, not flight risk. Although the
7 District Court could shift the rationale for detention from
8 community danger to flight risk, he should explain why and make
9 factual findings to support that determination." So, it's
10 allowing that you could make either. You detain on either
11 determination. It's just saying under this case, we don't have a
12 record to decide. And I have some other law that sort of goes
13 through a two-step analysis that I can provide the Court.

14 THE COURT: And if you have the cites, because I know
15 Ms. Allen will want to take a look at them, too.

16 MR. CASEY: Yeah. Another case that I was able to pull
17 that I think lays the two-step nature of the analysis out very
18 well is a case out of the -- one of the Iowa districts, out of
19 the Northern District of Iowa by Judge Reade. And it's a *United*
20 *States vs. Smith*. The citation is 2017 WL 1731711. And I
21 thought that was kind of a useful case under the Eighth Circuit
22 authority sort of explaining this two-step nature. And, you
23 know, what I found in my research, though, and I think what
24 applies to this case is we're moving under both prongs and I
25 believe the Court could find detention under either prong. But

1 usually the cases find that the person is a flight risk and that
2 would be appropriate in this case.

3 THE COURT: But I don't see how you're moving under both
4 prongs. I mean, --

5 MR. CASEY: Well, Judge, I think once we -- or once we
6 get to the detention hearing, once we meet the predicate of
7 §3142(f), in which case this case the serious risk of flight is
8 our predicate, then the Court under (e) makes the determination
9 about the conditions of release under either the appearance or
10 under safety -- danger to the community.

11 THE COURT: All right. But in terms of your moving, the
12 only way that you can move under right -- the way that I read the
13 statute is that they are a risk of flight?

14 MR. CASEY: Right. The serious -- yeah. That there's
15 a --

16 THE COURT: So, you can't move under both prongs.

17 MR. CASEY: Well, we're under (f). When I speak of both
18 prongs, I mean the determination under (e). The Court could
19 detain him finding either that there are no conditions of release
20 that would assure his appearance, or that there are no conditions
21 that would assure safety of the community. And we believe that
22 there are -- the Court could make that finding under either of
23 those. We think that there is a preponderance of the evidence
24 that there are no conditions that would ensure his appearance.
25 And speaking to that in the first instance, I know Ms. Allen made

1 a point of indicating that, you know, defendant doesn't have a
2 driver's license, he doesn't have a car, he relies on his parents
3 to get around. But the general facts are he's not so dependent.
4 He planned covertly to travel overseas and was able to that. And
5 he was able to get the ground transportation, the flight
6 transportation. He was able to obtain his passport. He was able
7 to take visa documents, all without his family knowing. And this
8 is the exact same living conditions he's going to be moving back
9 to, into this, you know, communal family home. And he still was
10 able to make very significant covert planning to facilitate his
11 own travel. And, you know, his ties to the community are pretty
12 limited. I mean, through his own willingness to just sort of
13 pick up and disappear from his family, it shows that these family
14 ties really don't have any tie to the community. I think the
15 testimony from Friday indicated this is an individual who is
16 isolated, you know, kind of a loner. And he really doesn't have
17 these ties to the community that typically the Court would look
18 to to say that he would stay. And there's a lot of, you know,
19 behavioral indicators, you know, that the Court -- that the agent
20 spoke to on a Friday that, you know, indicated that this is
21 someone with, you know, real motivation. We're still figuring
22 out what those motivations are, but they're real motivations, you
23 know, to get overseas and there's at least a significant reason
24 to believe -- join a foreign firing group. And I think on top of
25 that, you know, we have the family, the family, the people that

1 he's going to stay with, at least one member of that family
2 expressed the FBI needs to be concerned about this guy. They
3 need to keep an eye on him. So, there is still some real concern
4 here even by the people he's asking to stay with. And I think
5 under all of that, you know, that evidence shows beyond a
6 preponderance that he is a -- he is a risk of flight and no
7 conditions of release would ensure his appearance in court. On
8 the danger to --

9 THE COURT: Well, before you move onto the danger, is
10 there anything you want to say about the fact that he returned to
11 the United States voluntarily?

12 MR. CASEY: Your Honor, he, as I think this proffer
13 indicated, you know, he was in Egyptian custody and, you know, I
14 think that that fact significantly informs, you know, what his
15 decision was in terms of whether to return to the United States
16 or not.

17 THE COURT: Well, the proffer was that he had booked a
18 return ticket before he was ever interviewed or ever taken into
19 Egyptian custody.

20 MR. CASEY: That's correct, Your Honor. And I don't
21 have -- I don't have evidence to say that that's different. I
22 don't know, however, whether the family had communicated with him
23 telling him that, you know, the FBI has been at our door asking
24 about you. Because he would have booked a flight after the
25 family had turned him in as a missing person. And on that same

1 day, both KCPD and FBI had started extensive interviews, so.

2 THE COURT: Well, do you think it makes a difference? I
3 mean, I don't know exactly the date, I'll have to go back and
4 look at the transcript. There was testimony that the family sent
5 him an e-mail saying the FBI is looking for you or investigating
6 you and you need to come home. If someone comes home and
7 responds to that kind of an e-mail what does that say about their
8 risk of flight?

9 MR. CASEY: Well, I think what we really can't say is
10 whether he would have come on. He booked a lot of flights that
11 he didn't take. And I believe that the special agent's testimony
12 was that one sort of indicia of travel, one of these behavioral
13 indicators they look at is this sort of booking flights and sort
14 of confusing your itinerary. So, if his family contacts him and
15 says the FBI is looking for you, one way he could have thought he
16 was getting the FBI off his tail was to book a flight home that
17 he never intended on taking. So, I believe that actually cuts
18 both ways. And because we now know that he was in Egyptian
19 custody, we really can't say whether he would have boarded it or
20 not.

21 THE COURT: But you're not contending the Egyptians took
22 him to the airport and caused him to come home?

23 MR. CASEY: Your Honor, I have no comment on that. I'm
24 sorry.

25 THE COURT: Well, when you say you have no comment, I

1 mean, no evidence one way or the other?

2 MR. CASEY: I have no evidence one way or the other.

3 THE COURT: All right.

4 MR. CASEY: In regard to the dangerousness prong, I
5 think the key here is the defense wishes defendant's charge was
6 not an end in itself. It's a means. It's a means to something
7 else. He was trying to facilitate his own travel. And there is
8 reason to think that that travel was to join a foreign fighting
9 group. And that's a significant step for someone to take and
10 shows us something inside the defendant's head that there is a
11 desire for violence that, in this type of radicalization case,
12 doesn't just go away.

13 THE COURT: Well, I guess my question would be I'd
14 appreciate any argument you want to make about what danger he
15 poses to this community. I don't know that the Court can take
16 into account what danger he might pose to the Syrian community in
17 Syria. I mean, I think it has to be either the community here or
18 in the United States.

19 MR. CASEY: I believe that's right, Judge. But I think
20 he does pose a significant -- I think you cannot discount the
21 conduct. And I think once, you know, there are several cases --
22 and I apologize that I didn't bring one with me -- but there are
23 several cases to discuss once this sort of radicalization and
24 sort of terrorist motive takes place, it doesn't give up very
25 quickly. And here is an individual that, you know, we had

1 testimony about, you know, someone commenting, well, he's the
2 most radical person I've ever met. And he made the affirmative
3 steps to, you know, covertly get overseas. We can't at this
4 point say exactly what his purpose was. But there's a lot of
5 reason to think that that purpose was to join -- was to join the
6 fight. And he's back home and there's a lot of reason to think
7 he's going to bring that fight back home. And there's really no
8 conditions of release that would stop that. Because that would
9 require the type of, you know, 24-hour monitoring that would
10 basically create a private prison for this individual. And cases
11 are very clear that Pretrial Services does not need to go to
12 that. If that's the type of conditions that you're considering,
13 then that's too much, then that's an opportunity to detain the
14 individual. And I think as a danger to the community, that would
15 be completely appropriate under these facts.

16 THE COURT: When you say that there are a lot of reasons
17 to think he is bringing the fight back home, what is it about
18 this defendant and his conduct that causes you to stay that?

19 MR. CASEY: It's the -- it's what appears to be since
20 2014, he has sort of increasingly, you know, planned to and
21 prepared for a violent Jihad. And his original plan was to do it
22 overseas. It got thwarted. That's just not something you give
23 up overnight. This is someone who still believes that, whether
24 for religious reasons or other reasons, that violent Jihad is the
25 route to go. And that is something that we just can't discount.

1 And I don't think there's any conditions of release that would
2 protect the community from someone who, if they're willing to
3 just pick up arms, can go do it.

4 THE COURT: Okay.

5 MR. CASEY: Thank you, Judge.

6 THE COURT: All right. Ms. Allen.

7 MS. ALLEN: Your Honor, I'll try to keep this short and
8 not political. I'd ask the Court to rely on what he's charged
9 with and the evidence we heard and not what it is some pretty
10 radical speculation that the Government is going to. I think,
11 first of all, the most important thing here is just looking at
12 flight risk. The bottom line is Mr. Mohamud absolutely is
13 willing to forfeit his passport. And based on the charge alone,
14 he may not even have a passport anymore because that may not be
15 considered a valid passport. But even if not, he can forfeit his
16 passport. I know last time we were here Mr. Raskin said
17 something about the idea of -- that someone might be able to
18 provide him -- we've heard no evidence of that, that he has any
19 access to some sort of fake passport or way out of the country.
20 He doesn't have a car. He doesn't have a driver's license. He
21 has money that he would be willing to put up for bond. And while
22 we're not asking for this, if the Court thought it was necessary
23 to put him on GPS monitoring, I've spoken with Mr. Mohamud, he
24 said he would do GPS monitoring. His mother and sister came and
25 met with me. And the family is willing to do whatever needs to

1 be done to have him released. And they would be willing to help
2 Probation in any way, shape, or form. I think there's seven of
3 them there that live in that house. They're the people that
4 called the police in the first place. I mean, bottom line is Mr.
5 Mohamud isn't going anywhere. And he's not going to have the
6 means to go anywhere. He's not going to have a passport. He
7 doesn't have a car. He's not going to have the ability to run.
8 And I think it's incredibly telling what we've laid out in this
9 case that he went to Egypt. He booked a ticket home before any
10 authorities contacted him. The only reason he didn't get on that
11 flight is because Egyptian authorities took him into custody. He
12 was going to get on that flight on the 27th. And I know the
13 Government has speculated otherwise. But there's no evidence
14 otherwise. That ticket was booked. We know that his return to
15 the United States was voluntary. That's what the FBI said, he
16 wasn't in custody. He came back to the United States when he did
17 not have to answer to these charges, or to answer the
18 investigation. At that point there wasn't a charge, but he knew
19 the FBI was interested in him. I don't know what is more telling
20 to say that he is not a flight risk than the fact that he
21 returned from overseas when this all happened. And he did that
22 on his own. The only other thing I want to say is that there has
23 been no evidence that he has interest in violent Jihad. And
24 there's -- statements made on Facebook about Syrian fighting in
25 2014 is not evidence that he is somehow interested in violent

1 Jihad in the United States. And I do take issue with that. I
2 think under -- even under both prongs if the Court went there, he
3 absolutely could qualify for bond. But as far as just
4 considering the flight risk, there is no question that conditions
5 can be put in place that will secure his appearance in court and
6 that he is not a flight risk. Thank you, Your Honor.

7 THE COURT: All right. Well, at least one case has been
8 cited to the Court that I will need to take a look at. Well, I
9 guess two cases. The Northern District of Iowa case, as well as
10 the case at 570 Fed. Appx. 818 out of the Tenth Circuit. I think
11 it is important for the Court to know just what has to be
12 established before it can look at both prongs of the statute
13 where this is clearly a case where they were moving under the
14 flight risk prong. So, I will try -- and I think I'm in court
15 all afternoon -- but in between proceedings I'll try to take a
16 look at that. If I'm not able to get that done this afternoon,
17 then I'll do it promptly tomorrow and let the parties know.
18 Okay. Is there anything further that we need to address?

19 MR. CASEY: Not from the United States, Your Honor.

20 MS. ALLEN: No, Your Honor.

21 THE COURT: All right. We'll be in recess.

22 (Court Adjourned at 1:51 p.m.)
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INDEXWITNESSES FOR
THE PLAINTIFF:DIRECTCROSSREDIRECTRECROSS

Michael P. Buono

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6 I certify that the foregoing is a correct transcript
7 from the electronic sound recording of the proceeding in the
8 above-entitled matter.

9
10 /s/ Lissa C. Whittaker
Signature of transcriber

May 10, 2017
Date